

Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

June 10, 2004

**State Public Utilities Commission Building Auditorium
San Francisco, California**

In Attendance

Tom Rankin, Chairperson

Commissioners Allen L. Davenport, Alfonso Salazar, Robert B. Steinberg, Kristen

Schwenkmeyer, Darrel "Shorty" Thacker, and John C. Wilson

Christine Baker, Executive Officer

Not in Attendance

Commissioner Leonard McLeod

Call to Order / Minutes from the May 5, 2004 Meeting

Chairperson Rankin called the meeting to order at 10:05 am.

CHSWC Vote

Commissioner Wilson moved to approve the minutes of the May 5, 2004 meeting. Commissioner Thacker seconded and the motion passed unanimously.

Chairperson Rankin announced a change in the meeting agenda and introduced Dr. Donna Farley, Senior Health Policy Analyst from RAND, to make a presentation on 24-hour care.

Assessment of 24-Hour Care Options for California: Preliminary Findings

Dr. Donna Farley, Senior Health Policy Analyst, RAND

Dr. Farley presented preliminary findings from the study RAND did for CHSWC, pursuant to a November 2003 request to CHSWC from Senator Alarcón to look for the potential for cost savings by combining workers' compensation and group health. The 24-hour care options report is still in draft form, undergoing internal and external review.

Dr. Farley explained that 24-hour care integrates services or benefits into one package for workers' compensation and group health. For purposes of this study, RAND focused on integrating health care benefits between the group health provider network and workers' compensation providers

The study found that the feasibility of 24-hour care is influenced by health insurance environment in which it is done. The system is currently in an employer-based group health environment

Dr. Farley addressed the study research questions and shared the highlights of what was learned in the process:

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Question 1. What are the issues with the workers' compensation system that lead to considering 24-hour care?

The study found:

- High and growing costs of the California workers' compensation system
- Medical care is an important cost driver
- Concerns about the appropriateness of care
- High litigation rates that reflect dissatisfaction by workers and inefficiencies in processing claims

Question 2. What is the evidence that 24-hour care can address these issues and the components needed to do so?

The study found that potential benefits of 24-hour care include:

- Removing inconsistencies in standards of care
 - Achieving consistent legal language for medical necessity
 - Consistency of the evidence-base standards for what is good healthcare
- Achieving medical care cost savings through:
 - Reduction in overuse
 - Standardization of provider fees
- Quality improvement-more appropriate use
- Better access to care for work-related injuries
- Administrative cost savings-only achieved if health insurance is integrated
- Worker satisfaction → reduction in disputes

The study found techniques to achieving cost savings and better quality:

- Care management methods to reduce overuse
- Consistent fees for providers
 - Capitation – managed care plan
 - Fee schedule – fee-for-service plan
- Reviews for high cost procedures
- Cost sharing by workers – absolutely not allowed under workers' compensation and would require change in workers' compensation laws
- Internal medical review (IMR) – protect workers from inappropriate denials of care

Question 3. What unique attributes does 24-hour care bring to the table that could not be done in the current system?

Many of the intervention techniques just discussed could be used outside of the 24-hour care model. Some intervention techniques already happening in California include practice guidelines, caps on chiropractic and physical therapy services, fee schedules and generic drugs (all part of SB

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228) and provider networks (SB 899). The current workers' compensation system in California is moving in this direction. Techniques not being used include: formal care management methods (except HCOs) and cost sharing by workers, which is not allowed under current law.

What does this mean for 24-hour care? If a formal integrated structure system is done that pulls together health care from group health and workers' compensation sides, and puts intervention techniques into place, that structure in itself may help keep it intact and keep it operating effectively as a system. We suggested that this is the extra piece that 24-hour care brings to the table in terms of increasing the feasibility of having these techniques have a impact on the care and on the cost of the system.

Question 4. How feasible would it be to implement 24-hour care in the current employer-based insurance environment?

Dr. Farley explained the Employee Retirement Income Security Act of 1975 (ERISA) is the biggest challenge. ERISA is Federal legislation that regulates employee benefit plans. ERISA preempts a state government from regulating employer-based plans (EBP), while still preserving its authority over insurers operating in the state. ERISA also prohibits a state from mandating that employers offer health insurance. ERISA preemptions have impeded several previous 24-hour care pilots. Workers' compensation and disability plans are exempt from ERISA.

The stakeholder focus groups raised the following issues:

- Provider roles and responsibilities.
- Value and detracting for employees
- Changes for employers
- Reconciling two types of insurance coverage
- Administrative effects for state regulators
- Extent of integrating these functions

Dr. Farley offered general recommendations for the current system and 24-hour care as a whole:

- Establish a consistent standard of care for all medical services, based on scientific evidence
 - Standardize legal language regarding medical necessity
 - Standards to guide practice
- Establish state guidance that supports voluntary development of 24-hour care pilots by employers and insurers.
- Reinforce reforms being undertaken to resolve problems with the appeals process
- Establish separate medical and fiscal decision making for the provider networks specified by SB 899
- Consider adding an internal medical review step to address grievances before they go to the WCAB

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Dr. Farley offered specific recommendations for implementing 24-hour care:

- Identify design options and timeline
 - Ideally, test both basic design options
 - Integration of medical services
 - Integration of both services and insurance
 - Allow all pilots to operate for at least five years before judging feasibility and scalability
 - Identify action plan components.
- Create a supportive state environment to help pilots do what they need to do
 - Create expert resource in occupational health and workers' compensation to support physicians
 - Authorize the option of employee cost-sharing for medical care for work-related injuries
 - Establish a mechanism for internal medical review of denials of medical services
 - Establish a mechanism for external appeals of medical care disputes (tort issues)
- Require evaluation
 - Site selection and context
 - Diversity of sites to test options broadly
 - Include sites with high probability of success
 - Assess impacts of the individual components of 24-hour care programs
 - Potential for scale-up and transportability
 - Process of implementation
 - May be most important part of the evaluation
 - Identify drivers and barriers for success
 - Program effects
 - Select control groups carefully

Finally, Dr. Farley identified what is needed for 24-hour care pilots to work this time around:

- Key stakeholders must be willing to participate
 - Responsive to stakeholder needs and incentives
 - Allow flexibility to explore options that work best for employers and insurers
- Establish authority for care management techniques needed to change care and costs
- While allowing cost sharing for work-related care, track its effects carefully
- Provide technical support to the pilots for areas they identify that help is needed

Questions and Comments

Chairperson Rankin stated that the new law allows the 24-hour care experiment in carve-outs and

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that this situation deserves some focus. He added that carve-outs have now been expanded to cover any collectively bargained situation and that the most fruitful 24-hour care experiment would be in the public sector with a self-insured employer. Chairperson Rankin asked Dr. Farley if she had looked at this and commented that it may have been the case with some of the pilots. Chairperson Rankin recommended that this situation be examined. In addition, he stated that in traditional carve-outs in the construction trades there are trust funds for healthcare. Chairperson Rankin recommended that Dr. Farley look at a trust fund situation and how 24-hour care would work.

Commissioner Wilson added that both public and private self-insureds should be looked at in solving the integration problem. He also asked if Dr. Farley looked at managed care.

Dr. Farley responded that Kaiser program is the best example. Kaiser has not really integrated the medical care side and also not the insurance side. They keep it separate.

Commissioner Wilson noted that Kaiser has two different cost centers. He asked if there were others besides Kaiser and noted that the basic problem is that the health side is restricted but workers' compensation is unrestricted. He also noted that other states brought restrictions in workers' compensation.

Commissioner Wilson asked Dr. Farley if she knew what other states were doing. Dr. Farley replied that they looked at some other states but not in a lot of depth. She is aware that some similar techniques have been introduced into workers' compensation, however, 24-hour care, per se, has not. Techniques to improve inefficiencies and reduce costs have been introduced in other states.

Commissioner Wilson stated that with cost containment, down the road the decision to participate in 24-hour care arrangements would be a little easier. Dr. Farley concurred and responded that the real operative question to RAND is what added value does 24-hour care bring that makes it worth going through the administrative restrictions that would be required to do it.

Commissioner Wilson stated that he has worked in both the public and private sector. He understands that private sector employers are subject to ERISA but public agencies are not bound by ERISA. Dr. Farley confirmed that public sector employers are not subject to the ERISA rules.

Commissioner Wilson agreed that it would be best to try 24-hour care with a public sector agency to avoid that major hurdle. Dr. Farley added that this applies to any public agency including Federal, state and any subdivisions there under.

Commissioner Davenport asked if there was 24-hour care anywhere in the world and wondered if it were within the scope of the study to look at that. RAND has looked at British Columbia briefly but has not gone into a great deal of detail. They do know that this system identifies work related injuries because they are able to keep track of this data. Dr. Farley added that they have not looked at Sweden.

Commissioner Wilson stated that in the Netherlands, there was no concept of workers' compensation, permanent disability and litigation because there was absolutely no difference between industrial and non-industrial injuries. Injuries in the Netherlands are handled exactly the same whether industrial or not. Dr. Farley replied that that is a function of universal health insurance. Our health insurance is so fragmented because of its employer base.

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Commissioner Davenport asked if Dr. Farley found people in the focus groups to be consistently defensive rather than creative. Dr. Farley answered that all the groups were very constructive and very thoughtfully participated in the discussion. RAND met with each group separately in order to get their views openly and in a confidential way.

Commissioner Salazar asked if focus groups participants were willing to move toward this type of system sometime in the future and if their enthusiasm about this concept could be gauged. Dr. Farley replied that the insurers did not want to go there really much at all. She believed that the issue of the different types of health insurance drove this and that the tail coverage was the major issue for them.

Commissioner Salazar asked if this was the opinion of both group health insurers and workers' compensation insurers. Dr. Farley replied that it was primarily workers' compensation insurers. All other groups were willing to examine the issues but came in with their sets of operational and implementation issues. The employers were quite open to it, interested in exploring the options and seeing what might work to help improve things for them but they did tick off for RAND many issues previously discussed in the briefing in terms of the administrative burden for them. Claimants' attorneys did entertain the thought and laid out issues they were concerned about in terms of protecting their clients. But they worked through some of the options and issues very constructively. Dr. Farley opined that if 24-hour care were to move ahead, some of the negative issues would be brought forth in the debate and they would want their concerns to be addressed effectively.

Commissioner Steinberg noted that the request to look at this concept came from the legislature and that requests about this issue have come up periodically. He stated that the problems are formidable. Commissioner Steinberg asked, from a policy standpoint, if the obstacles outweigh the benefits and should this issue be put aside.

Dr. Farley responded that she would not take it that far. She feels that there is potential for the changes that have been introduced into the workers' compensation system to do a lot that 24-hour care otherwise would do. There is no guarantee that the system is stable enough to stay intact. The added value that 24-hour care could bring is an infrastructure that would help keep this process intact. RAND feels that continuing ahead with some pilot level efforts on 24-hour care to the extent that there are employers out there interested and willing to do it is a valuable alternative that needs to be tested. This is because the next time a request comes through there might be new data to look at. There is not a lot of data at this point and there is very minimal empirical grounding about how 24-hour care would work. In Dr. Farley's opinion, it is worth trying at least using the carve-out mechanism to explore 24-hour options even while you are giving the system some time to see how it could do with the reforms.

Chairperson Rankin asked if there was any further legislation that needs to be done in that area to facilitate the use of 24-hour care in the carve-out. Dr. Farley said that she could not answer this question at the moment but with most recent information on the carve-outs and what RAND has already done, they can probably bring that together and answer that question. RAND will do that in the report.

Chairperson Rankin stated that the requirement that employers provide immediate medical care up to \$10,000 seems to be a step in this direction. He recommended that it should be looked at

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how this works.

Commissioner Wilson would like to see the report comment on the managed care programs in California and how successful they are because of some similarities between them. Dr. Farley agreed that was another example within workers' compensation that there is the managed care vehicle and that was not addressed specifically. Commissioner Wilson suggested that be pursued in the report. He is aware of three or four of them to see how successful they are and how long they have been operating. He suggested that maybe something could be promoted in that area.

Chairperson Rankin stated that Dr. Farley seemed to imply that the ACOEM guidelines made it more difficult. Dr. Farley stated that she did not want to leave that impression. Dr. Farley noted that she has not studied the ACOEM guidelines in detail enough to know what is in them but the flag she was waving was caution to be sure that the standards are consistent with guidelines on the group health side. Her guess is that they are because they are coming from evidence and in most cases the evidence is quite clear in terms of what are the best practices that are being recommended at this point. Ms. Baker stated that CHSWC has an ongoing study about this.

Chairperson Rankin thanked Dr. Farley very much for her cogent presentation and asked if she was continuing to work on it. Dr. Farley responded that they are pretty much done. She will take CHSWC's suggestions and comments under consideration. The document is currently being reviewed within RAND and externally. The next step is to write the final version of it and submit the report to CHSWC.

Chairperson Rankin noted that there was a question from a member of the public. Patsi Sinnott identified herself as an independent researcher and suggested that the study look at integrated disability services. She asked if the stakeholder meetings consisted of only California stakeholders and Dr. Farley answered that they were.

Ms. Sinnott suggested other potential participants that could provide useful information, including a population of physicians within full service medical groups who are working aggressively to identify high quality within their group, pushing quality and quality improvement within their organizations. For example, the Pacific Business Group on Health (PBGH) is interested in "pushing the envelope." Another suggestion would be to talk to self-insured employers with very integrated programs within their institutions. Ms. Sinott then asked Dr. Farley to clarify if ERISA applies to employers across state lines. Dr. Farley answered that ERISA was Federal legislation and still applies to California employers.

Ms. Sinott then brought up evidence-based medicine, that there is nothing out there for procedure-based cost driving specialties that will be an issue for workers' compensation as well. She believes that there is value to look at process of care as the processes become more uniformed and standardized. ACOEM only covers 40-60% of medical conditions that are currently being processed through the California workers' compensation system.

CHSWC Vote

Commissioner Wilson moved to approve the report for release to Senator Alarcón and the community for comment. Commissioner Schwenkmeyer seconded and the motion passed unanimously.

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Chairperson Rankin then introduced the CIGA issue as the next item on the agenda. Ms. Baker invited Mr. Richard Hurd, standing in for Mr. Mulryan from CIGA and CHSWC Judge Lach Taylor to join her.

California Insurance Guarantee Association (CIGA) Update

Richard Hurd, CIGA

Christine Baker, Executive Officer

Lachlan Taylor, CHSWC Staff Judge

Judge Taylor, Ms. Baker and other CHSWC staff members have put together an issue paper at Chairperson Rankin's request. Ms. Baker gave some background as to the paper; the goal of the project that CHSWC undertook is to reduce the long-term cost of CIGA and to disburse those costs equitably among large and small employers. This proposal would end the practice of shifting disproportionate CIGA costs onto smaller employers and it would enable CIGA to meet its obligations with less reliance on costly bond financing. Ms. Baker then invited Mr. Hurd to give additional background on the current status of CIGA.

Presentation by Mr. Hurd

Mr. Hurd stated that CIGA was created by the legislature back in 1969 to address at that time a very small automobile insurance company that had gone insolvent. The purpose of CIGA was to provide some financial and legal assistance to those insureds and claimants who were put in a difficult position because their insurance company became insolvent. CIGA paid out about \$2 ½ million in losses on the 1969 insolvency. CIGA pays much more than that in losses today.

When CIGA receives an insolvent carrier after the court declares the company to be insolvent and the Insurance Department has taken over as liquidator, CIGA determines what liabilities and costs are for the claims to be settled. There is an assessment process and CIGA declares an assessment. The funding comes from three primary sources; assessments on the industry, which are passed through in California to the policyholder, are approximately 36% of CIGA's funding. Distributions from insolvent insurance company estates are about 40% and investment income has been about 14%. Until 1999-2000, CIGA was able to fulfill its obligations through state distributions and assessments. The average payout for the first 30 years was about \$50 million a year. Now CIGA pays more than that in one month. From 1989 to 1999 CIGA only assessed once for liability lines of coverage. When Superior National, a group of five companies, went broke in 2000, they were the largest private workers' compensation insurer in California. When they went broke, CIGA had a surplus of \$290,000,000 in their workers' compensation account. Since those five companies have gone insolvent, CIGA has paid out in excess of \$1.2 billion on workers' compensation California claims on those five companies. There are about 10 to 12 states that are involved in the Superior National matter; however, CIGA has 90% of the claims.

Mr. Hurd mentioned that CIGA has paid out in excess of more than \$1 billion in the Superior National matter and have only received only \$300 million in estate distribution. The rest of the money has come from surcharges on the insured public. In addition to Superior National, CIGA has had about two dozen other insolvent insurance companies, primarily workers' compensation carriers in the past four or five years. Since 1999, these private insurance companies include

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Fremont, Reliance, Legion, Lumberman's Mutual Group and Superior National. These are all insolvent. Lumberman's Mutual, an Illinois domestic company, is now under Federal/state supervision back in Illinois, not under liquidation yet.

Mr. Hurd stated that the costs of this magnitude are more than anyone ever contemplated. The legislature had no idea in 1969 that CIGA would be spending more than \$4 million a day of which over 90% are for workers' compensation claims.

Mr. Hurd stated that while the Department of Insurance has been extremely helpful in getting statutory deposits to CIGA it has simply not been enough to fund the workers' compensation situation that CIGA faces today. CIGA went to the legislature last year and they came up with the bonding proposal. CIGA is ready to start issuing bonds. State Compensation Insurance Fund has been very helpful recently in crafting the wording about the State Fund that will be part of the official statement. This is critical because State Fund has 53% of the market in California right now is obviously the key payer of assessments to CIGA for the bonds. CIGA would like to thank State Fund for stepping up and helping CIGA with this.

Mr. Hurd then gave some financial background on CIGA as an entire entity. CIGA covers all kinds of property-casualty lines, liability lines as well as workers' compensation. CIGA has about \$875 million in assets and about \$4.5 billion in liabilities. That leaves CIGA with a deficit of about \$3.5 billion. Surpluses in automobile, homeowners and personal lines categories are about \$200 million. Liability lines have about a \$70 million surplus. Workers' compensation has about a \$3.5 billion deficit. CIGA feels it has turned the corner and barring any more insolvencies because claims payments are starting to drop. This is because claims are aging, and CIGA is closing claims. CIGA has closed almost 6,000 claims in the last 90 days. There are still some 67,000 open claims in California, of which about 60,000 are workers' compensation. Workers' compensation claims go on for many years.

Mr. Hurd has been asked by CHSWC to address the issue of the assessment based from the direct written premium received today to incurring the deductible portion on larger employers by assuming the deductible piece of that policy. That assessment base currently is about \$14 billion of direct premiums. The CIGA assessment is 2% of that, some \$280 million of annual workers' compensation assessment. Mr. Hurd understands that if the deductible credit piece of the premium is included that \$14 billion premium base rises over \$20 million which would give CIGA at 2% an assessment in the neighborhood of \$400 or \$420 million based on 2003 numbers. That is still only about 1/2 of the anticipated workers' compensation payout this year of some \$800 million. That is about a 30% increase that would go a long way in paying off the bond obligations much sooner than anticipated.

Mr. Hurd was also asked to address another concern of DIR's in the recent legislation about the medical network and provider networks. Mr. Hurd feels it is an excellent change for employers and insurance companies that receive new claims. Many of CIGA's claims are many years old by the time they come to CIGA by the nature of the company being insolvent and the age of the claim. Mr. Hurd is not clear at this point what impact the network would have to create its own network or join one of the existing networks, however, he believes it would be a value to CIGA and if the concept continues to include discounted medical claims it will be a benefit to CIGA. CIGA's claims people are looking into the network side of it.

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Mr. Hurd again thanked the State Fund as they will be attending rating meetings and insurance bond meetings in New York with CIGA representatives next week. CIGA hopes to go to market with their bonding towards end of July or first part of August.

Questions and Answers

Commissioner Steinberg stated that it is his understanding that CIGA is obligated to pay all claims from insolvent carriers. He asked Mr. Hurd how many billions of dollars did that involve. Mr. Hurd replied that CIGA has about \$3.5 billion in workers' compensation claims today.

Commissioner Steinberg said that he understood that CIGA is unable to meet these obligations under the present limitations. Mr. Hurd replied that is correct and that is the reason for bringing the bond proposal.

Commissioner Steinberg asked Mr. Hurd if the 2% represents just workers' compensation carriers or all carriers. Mr. Hurd stated that it applies to all carriers other than life and disability, which have a separate association. It's 2% of all premium amounts and its up to the Board each year to determine the cash flow needs of the association. There had not been an assessment for 10 years, until the late 1990's, and it is across all lines of insurance in California.

Commissioner Steinberg asked if they had contemplated increasing it to 3%. Mr. Hurd answered that it was contemplated but the current 2% sunsets in 2007. He is not aware of any plans to change it to 3%.

Commissioner Steinberg asked of the 2% assessment, how much impacts the still surviving workers' compensation carriers, including State Fund as opposed to the property-casualty companies. Mr. Hurd explained the way the assessment process works. CIGA's Board declares an assessment, then in the following year the insurance companies pay the assessment at the time CIGA's Board declares that assessment. In the next calendar year, they would pass that surcharge, 2%, as a tax, in effect, on the insurance premium paid by the insured. It is not really paid by the insurance company. It is a pass-through from the insurance company to their insured. In the case of workers' compensation, the employer who bought the workers' compensation policy pays the 2% surcharge.

Commissioner Steinberg asked, of the 2%, how much is being paid by workers' compensation premium paid as opposed to property-casualty premium. Mr. Hurd replied that in California in 2004, the workers' compensation assessment would be about \$300 million dollars. There is no property-casualty assessment this year because there are sufficient funds in those other categories.

Commissioner Steinberg asked how much the total bond approval is. Mr. Hurd responded that the total bond approval is \$1.5 billion. The first issue they are working on right now is for \$750 million that is a combination of fixed and variable rate bonding.

Commissioner Steinberg asked how the will the bonds be repaid. Mr. Hurd stated that the bonds would be repaid on special bond assessments on member insurance companies, again which is passed through to the public buying the insurance policy. Mr. Hurd believes there is a twenty-year payment deadline on those bonds in the legislation.

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Commissioner Steinberg confirmed that employers will be paying both the 2% assessment and paying back the bonds stretching over twenty years.

Commissioner Steinberg asked how we got into this mess in the first place and observed this problem seems to coincide with the elimination of the premium rate. Mr. Hurd concurred that the rating regulation dropped in the mid-1990's saw these workers' compensation carriers get into trouble through the marketing, underwriting and discounting that they were doing. CIGA got hit with all the insolvencies beginning in 2000.

Commissioner Wilson asked if the claims administrator or an actuarially determined number established the \$3.2 billion. Mr. Hurd stated that it is a combination of both; primarily case reserves determined by the examiners working the cases and some reserves from current but not reported claims. CIGA has had actuary assistance on those kinds of claims.

Commissioner Wilson asked how many claims administrators CIGA has now for about 70,000 claims. Mr. Hurd stated for about 70,000 claims, there are 15 third party administrators (TPA) actively managing workers' compensation and liability claims and 120 in-house CIGA employees that manage workers' compensation as well as some liability claims. The more complicated claims are handled in-house at CIGA. When the TPAs run into a complicated claim it comes back to CIGA.

Commissioner Steinberg asked if CIGA was attempting to increase the premium base against the 2% surcharge by eliminating the deductibles of the establishment of the current premium base. This would be shifting more of the obligation to current carriers, increasing their current obligations as opposed to being able to stretch it out. He asked Mr. Hurd if that was a fair statement. Mr. Hurd replied that he didn't feel that really increases the obligation to the carrier because it is a pass-through.

Commissioner Steinberg stated that CIGA is anticipating raising \$200 million per year by including the deductible portion to the premium base. Mr. Hurd concurred.

Chairperson Rankin noted that actually affects the employers, not the insurers, who are not paying on that several billion dollars. Mr. Hurd responded that the insurance company actually advances the payment to CIGA and then recovers it from the employers that purchase the insurance policy. So, assessing the large deductible credit is currently not subject to CIGA's assessment. It is more of an impact on those large employers that benefit from that large deductible credit.

Commissioner Steinberg stated that currently they would be passing through more of an increase. Mr. Hurd noted that it would still be 2%, but would be passing it through on a gross premium number on the insured as opposed to an amount of the deductible credit.

Commissioner Steinberg stated that the individual premium payer now gets the benefit of that deductible portion. He asked Mr. Hurd if they would be screaming. Chairperson Rankin stated that they would scream and already have. There are two ways of doing this. One is to take in more money by leaving it at 2%. The other possibility, that CHSWC has calculations on this, if you spread it to cover the deductible it could be like 1.3% for all employers instead of 2% which would obviously benefit the small employers who are unable because of staff to take advantage of the large deductible policy.

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Commissioner Steinberg stated that it would not benefit the larger employers and smaller employers would pay less. It would not be much of a problem if you just issue more bonds. Chairperson Rankin replied that the problem is that the bonds have to get paid off.

Commissioner Wilson asked if it was true that the deductible portion is not assessed at all to employers who are totally self-insured. Mr. Hurd stated that they are assessed outside of CIGA in the Self-Insurance Fund. Commissioner Wilson asked if they are being assessed to provide security to their self-insured programs. This is an area that is not assessed at all. Mr. Hurd said that was his understanding.

Chairperson Rankin stated that some of these employers argue that they have to cover this somehow so they have to be bonded or something for this liability. Chairperson Rankin asked if he knew anything about that. Commissioner Wilson replied that totally self-insured people have to buy a bond but this group is getting out from under this obligation. Chairperson Rankin replied that it is basically an unfair situation - \$6 billion that are not being covered.

Commissioner Steinberg asked how CIGA handles newly admitted carriers. Mr. Hurd replied that as soon as CIGA becomes aware of a new company they get in touch with them and explain the assessment process so that they immediately start surcharging their policyholders so that they are not put into financial risk because of the CIGA assessment. Mr. Hurd does not believe the CIGA assessment is a barrier to the marketplace right now. He believes that there are other factors that are the barrier to the marketplace.

Commissioner Wilson asked what happens if there is a bankrupt employer that has a large deductible and cannot meet the responsibilities of that deductible. Does the insurance company pay it or does that just become part of the bankruptcy? Mr. Hurd replied that the insurance company is actually responsible for those large deductible policies from first dollar. CIGA is then responsible for first dollar losses. In those large deductible policies there may be a surcharge by way of the large deductible.

Chairperson Rankin stated that with a huge company, if an insurance company has too much of their policies with that company and they go bankrupt, then CIGA takes it on. Mr. Hurd concurred. Both Reliance and Legion, which were both domiciled in Pennsylvania, were heavy writers of large deductible policies in California. CIGA is paying first dollar claims on these.

Commissioner Salazar stated that he tends to be sympathetic to small businesses with respect to the distribution of funds that they pay into the system to deal with this problem. He feels that it is a lose-lose situation and if there is a way that CHSWC can provide relief somehow, somehow with respect to distribution of payments into the system that would be incredibly helpful. He also believes that the second recommendation has to do with the waiving of late fees that CIGA is responsible to pay. He believes it is not CIGA's fault to be in the position to pay the late fees.

Presentation by Judge Taylor

Ms. Baker then introduced Judge Lachlan Taylor who has looked at this issue along with Irina Nemirovsky, Kirsten Strömberg and the rest of staff who has worked on this paper. She recognized Mr. Larry Mulryan and Mr. Michael Nolan who have been helpful to CHSWC. This was done in a very short time but had a lot of cooperation with the parties. Judge Taylor did draft some potential legislative language that still needs some fine-tuning. CHSWC received an

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email from Mr. Dave Bellusci. CHSWC needs to work with the parties to fine tune the language after this meeting.

Judge Taylor stated that the background paper includes proposed statutory language to expand the assessment base for CIGA assessments to include the amount that premiums are discounted for high deductible policies. Exact language that is practical to administer is being refined with advice from Messrs. Nolan and Bellusci and others. The proposal also includes technical drafting improvements on the existing language that were suggested by legislative counsel.

Chairperson Rankin suggested reducing the assessment percentage below the existing 2% cap and extending the sunset date. Judge Taylor stated that the proposal also assures that CIGA is not responsible for increased amount of medical payments caused by delay of the insolvent carrier.

Commissioner Davenport asked to whom who are the late fees payable. Judge Taylor replied that Labor Code Section 5814 penalties are payable to the injured worker but the increased medical payment is payable to the medical provider.

Chairperson Rankin suggested that alternatives to balance the extension of the sunset date against the amount of the cap on assessments to assure financial stability for CIGA and perhaps improve the marketability of the CIGA bonds.

Ms. Baker asked that the report be released for public comment at this point and CHSWC will continue to work on alternatives in the language.

CHSWC Vote

Commissioner Davenport moved to release the draft CHSWC report on the California Insurance Guarantee Association for public comment. Commissioner Salazar seconded and the motion passed unanimously.

Planning for Future CHSWC Conferences

Christine Baker, CHSWC Executive Officer

Ms. Baker thanked the CHSWC members for the opportunity to brief them on a number of proposals for their consideration.

At the last meeting, CHSWC members asked staff to develop the concepts of the forum that we had identified. Several concept draft papers are included that may be subject to change but are meant to be a framework for which CHSWC can decide on whether they want to proceed. These are subject to still going through advisory groups and working through the details that is done with all these forums. Members from the Division of Workers' Compensation and other parties to work through and fine-tune all of the subjects that will be presented in the forums.

Proposed CHSWC/DWC-Sponsored Training on AMA Guides

Ms. Baker introduced the first proposal to explore the feasibility of working with the workers' compensation medical community and co-sponsoring training sessions with the Division of Workers' Compensation on AMA forums, both north and south.

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It has been brought to CHSWC's attention that there is a critical need. CHSWC staff has met with Kaiser and a number of other doctors and it was raised that the impact of the AMA guides that have to be implemented on January 1, 2005 including all the report writing and all the permanent disability writing. The doctors in the community are not prepared and there is not standardized training out there. It would be helpful if all of the stakeholders and medical community could come together and work together at preparing some high quality training sessions.

Ms. Baker stated that she broached this concept with the Division of Workers' Compensation. They are very interested in co-sponsoring or participating. Their resources right now are completely diverted to regulations so they would work with CHSWC who would take the lead in trying to pull this kind of concept together. CHSWC has not yet met with the medical community except for Kaiser. CHSWC could bring in as partners all the other medical components and see about creating these forums. CHSWC hopes to share in funding with the Division of Workers' Compensation as well as other members of the community who would want to participate including the insurance industry. This would include anyone who would like to share in trying to make sure these trainings take place. It is a critical need to the entire community.

CHSWC Vote

Commissioner Davenport moved to approve the proposed educational forum on AMA guides. Commissioner Wilson seconded and the motion passed unanimously.

Proposed Forum on Terrorism and Disaster Preparedness

Ms. Baker introduced the second proposal to do the Forum on Terrorism and Disaster Preparedness. As a result of the last meeting, Ms. Baker happened to meet a woman from Homeland Security who advised Ms. Baker where CHSWC might apply for some grants in disaster preparedness. If CHSWC concurs, after the meeting, staff will proceed with those contacts. The proposal is to do a Terrorism and Disaster Preparedness Forum and perhaps explore additional funding for a pilot for disaster training preparedness. Ms. Baker believes that the forums could be pulled together possibly in November of this year.

Commissioner Davenport commented that is it appropriate for RAND to be involved in this, perhaps as a sponsor, given that national security is their bread and butter. In addition, RAND has an enormous amount of research on this. Commissioner Davenport brought to CHSWC's attention RAND's work for the Chamber of Commerce in Los Angeles on the security of buildings. Commissioner Davenport would like CHSWC to focus some attention on the efforts of the private security industry to be engaged in evacuation plans and other kinds of preparedness efforts. This is a tremendous growth industry. CHSWC ought to look to that industry for support and information in putting this together. A survey was done with SEIU members who work in private security and discovered an enormous lack of preparation even post-September 11th. This forum would be helpful to help emphasize this and would be useful for everyone.

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CHSWC Vote

Commissioner Salazar moved to approve the proposed educational Forum on Terrorism, Natural Disasters and Workers' Compensation. Commissioner Davenport seconded and the motion passed unanimously.

Proposed Forum on Treatment Protocols

CHSWC is required to conduct a survey of appropriate treatment protocols to make a recommendation to the Administrative Director for adoption by November 1st. Ms. Baker noted that RAND has been very actively working on the research for these protocols but at the same time there is a large interest in the community as to what are protocols, what are scientific based/evidence-based protocols, and how this would affect quality, access and cost of care.

Ms. Baker introduced Dr. Harrison to present to CHSWC the steps he took to develop his proposal. Dr. Harrison, a professor in occupational and environmental medicine and has been practicing and doing research in environmental medicine for about 20 years at UCSF. He explained that under SB 899 physicians are now required to use the "green book," – ACOEM guidelines for occupational medicine practice. Dr. Harrison believes there is a major gap now in getting the information out to the practicing physician community on what these ACOEM guidelines are, what is evidenced-based practice and how should they be thinking about their practice on a daily basis. Dr. Harrison said that the University of California has experience in evidence-based medicine and that there are physicians who can provide some valuable information to the occupational medicine community. From group health practice, Dr. Harrison feels that we need to be doing more to bring the best practices outside of workers' compensation into the workers' compensation field.

Dr. Harrison proposed working with CHSWC, and hopefully with the co-sponsorship of the Division of Workers' Compensation, for a one or two day forum in the Fall. He suggested that they invite at no or low cost the practicing physician community, insurance carriers, employer community, risk managers and TPAs together to provide them with some educational information, bring them up to date about what has happened, what the impact is on their practice, and begin a discussion about best practices and what is peer review evidence-based medicine. Ms. Baker stated that they would work with the Division of Workers' Compensation and other members of the workers' compensation community in developing this forum.

CHSWC Vote

Commissioner Wilson moved to approve the proposed educational forum on evidence-based practice guidelines, quality of care, costs and appropriate care. Commissioner Thacker seconded and the motion passed unanimously.

Proposed Education Forum on Best Practices

Ms. Baker next brought up the issue of the Best Practices forum. There was a discussion on whether to defer this forum. It was decided that it was a matter of scheduling this forum and there was a decision to go ahead and vote on it.

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CHSWC Vote

Commissioner Davenport moved to approve the proposed educational forum on Best Practices. Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Proposed Reinstatement of the Promptness of First Payment Report

Ms. Baker stated that CHSWC received a letter from Senator Spier's office asking that the Promptness of First Payment report that used to be issued many years ago by DIR and DWC be reinstated.

Ms. Baker pointed out that this is not totally the responsibility of CHSWC but is an operational kind of project. CHSWC staff has begun an investigation about the potential capability of developing this kind of report and met with staff from the Division of Workers' Compensation, Information Systems and Department of Insurance. The current workers' compensation system has the capability of generating this kind of report. Ms. Baker requested that she provide more details for the next CHSWC meeting on how this report could be generated by the DWC and determine how representative the data is right now in terms of the whole industry and whether it would be a valid report if they were able to generate this.

Chairperson Rankin commented that this used to be a very useful report. It reports how long it takes insurance companies and self-insured employers to pay the first workers' compensation payment. One could really get an idea how they were performing which one cannot get without that report. Chairperson Rankin does not understand why it was discontinued and believes that whatever CHSWC can do to get it back, even though it is DWC's responsibility, should be done. He suggested that if Senator Spier wants to introduce a bill that the DWC has to do it is pretty easy to do. Now with the information system in place it should be easier than it used to be. Chairperson Rankin asked when it was discontinued. Ms. Baker replied that it was discontinued when then-DWC Administrative Director Casey Young thought that the workers' compensation information system (WCIS) could start running and produce the data more accurately.

Other Business /Proposals/Public Questions and Comments

There were no further matters for discussion and the meeting was adjourned at 12:05 pm. The next meeting will be set for August.

Approved:

Respectfully submitted,

Tom Rankin, Chair

Date

Christine Baker, Executive Officer Date